United Nations CCPR/C/THA/CO/2/Add.1

International Covenant on Civil and Political Rights

Distr.: General
10 August 2018

English only

Human Rights Committee

Concluding observations on the second periodic report of Thailand

Addendum

Information received from Thailand on follow-up to the concluding observations*

[Date received: 18 July 2018]

* The present document is being issued without formal editing.

GE.18-13151(E)

1813151

Please recycle

I. Constitution and Legal Framework (Paragraph 8 of the Concluding observations)

1. The Constitution of the Kingdom of Thailand B.E. 2560 (2017) was promulgated on 6 April 2017 replacing the Interim Constitution of 2014. The drafting of the 2017 Constitution had placed emphasis on public participation, including through social media. That draft was approved by national referendum in August 2016 with 61.35 percent of votes in favor, and after further reviews by the National Legislative Assembly (NLA) and the Constitutional Court of Thailand, granted royal approval by His Majesty the King.

2. As with previous Constitutions, the 2017 Constitution guarantees the rights and liberties of the people, focuses on equality of persons before the law, and prohibits discrimination on any ground, in line with the International Covenant on Civil and Political Rights. This Constitution further guarantees the exercise of a person's rights and liberties, even if not explicitly listed in the Constitution, as long as they are not prohibited or restricted by the Constitution or laws, insofar as such exercise of rights and liberties does not affect national security, public order or good morals, and does not violate the rights and liberties of others.

Sections 44, 47 and 48 of the Interim Constitution and Section 279 of the 2017 Constitution

3. The duties and powers of the Head of the National Council for Peace and Order and the National Council for Peace and Order (NCPO) as well as orders and announcements, including those issued under sections 44, 47, and 48 of the Interim Constitution, remain legally intact by virtue of Sections 265 and 279 of the 2017 Constitution.

4. The purpose of Section 44 is to promote unity and reconciliation of the people and to prevent, resolve, and suppress any act which undermines public order or stability of the state - contributing to the on-going efforts to reform the country. The Royal Thai Government is aware that exercising Section 44 is an exception to general legal principles and must be done only when there is absolute necessity. Any government agencies proposing an enactment of laws or regulations pursuant to Section 44 must follow the guidelines prescribed by the NCPO on 9 January 2018 which requires a justification of necessity for the reform of the country. Furthermore, anyone can file a claim to the Constitutional Court if he or she believes that any law or regulation enacted under Section 44 is inconsistent with the legal and procedural requirements set out above.

5. Laws and regulations enacted under Section 44 must be implemented strictly for the purpose of expediently addressing the problems they are intended to resolve and must not produce any adverse impact on the majority of the people. Officers who are found to have abused their powers pursuant to such laws and regulations will be prosecuted. Supervisors who are found to be negligent will also be prosecuted. The laws or regulations under Section 44 may be repealed if and when deemed to be no longer necessary.

6. Section 279 of the 2017 Constitution was not intended for the purpose of restricting the rights and liberties of the people. As reform is a long-term process, this Section guarantees continuity of the reform measures initiated under the auspices of the Interim Constitution, which are based on necessity to foster a stronger and sustainable democracy and to restructure the economy.

7. Announcements, orders, and acts of the NCPO or the Head of the NCPO are regularly reviewed on the basis of necessity and relevance to the changing circumstances. As Thailand is approaching the final phrase of the 3-stage Roadmap, the NCPO plans to review all of the laws, regulations and measures enacted under the Interim Constitution.

II. Extrajudicial killings, enforced disappearances and torture (Paragraph 22 of the Concluding Observations)

Draft Act on Prevention and Suppression of Torture and Enforced Disappearance

8. Committed to the promotion and protection of human rights, the Royal Thai Government designated human rights as a national agenda on 21 November 2017, linking it with the Thailand 4.0 Policy and our efforts to achieve sustainable development. On 12 February 2018, the Prime Minister of Thailand, in his keynote speech to announce the new national agenda, reaffirmed the Royal Thai Government's commitment to the fight against torture, emphasizing that preventive measures, awareness-raising, and legislation prohibiting torture are some of the key factors for Thailand's effective implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9. In this light, the Royal Thai Government considers the draft Act on Prevention and Suppression of Torture and Enforced Disappearance to be a milestone and a demonstration of the intention to seriously address the allegations relating to torture and enforced disappearance in a systematic and institutional manner. The current draft Act consists of 31 sections which, among others, establish specific criminal offences of torture and enforced disappearance, based on the definitions stipulated in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance.

10. This draft Act is currently undergoing public hearings in line with requirements pursuant to Section 77 of the 2017 Constitution to ensure that the interests of all stakeholders are considered and that constitutional procedures are observed. The Rights and Liberties Department, Ministry of Justice, is working expeditiously with the view to submitting the revised draft Act to the Cabinet by September 2018.

National Committee for Managing Cases Relating to Torture and Enforced Disappearance

11. While the draft Act is under consideration and review, the Prime Minister of Thailand issued Order No. 131/2560 dated 23 May 2017 to establish the National Committee for Managing Cases Relating to Torture and Enforced Disappearance, with the Minister of Justice as Chairperson and 13 representatives from related agencies as Members, in order to address alleged cases of torture and enforced disappearance and to prevent future occurrences of such cases.

12. To commence its work, the National Committee established 4 Sub-Committees headed by different agencies as follows:

(i) The Sub-Committee to Monitor and Investigate Cases of Torture and Enforced Disappearance is in the process of verifying the list issued by the UN Working Group on Involuntary or Enforced Disappearances, where 82 Thai individuals have been named to be allegedly disappeared;

(ii) The Sub-Committee on Remediation for Cases of Torture and Enforced Disappearance has considered measures to remediate victims of torturous acts and enforced disappearances;

(iii) The Sub-Committee to Prevent Acts of Torture and Enforced Disappearance has provided trainings to officers throughout the country who are responsible for receiving complaints and has developed a manual on the preliminary investigation of alleged acts of torture and enforced disappearances. A number of memoranda of understanding between relevant agencies are being prepared and considered to strengthen the Sub-Committee's capacity to fulfill its duties;

(iv) The various regional Sub-Committees on the Screening of Cases of Torture and Enforced Disappearance have also been considering complaints of torture and enforced disappearances whether they meet the criteria set out in the respective Conventions for submission to the Sub-Committee to Consider Cases of Torture and Enforced Disappearance. Cases which do not meet the criteria will be forwarded to other related agencies for further consideration.

13. The Committee will take all allegations of torture and enforced disappearances into consideration and will investigate if such allegations meet the criteria of torture and enforced disappearances set out by the respective Conventions. To enable a fair investigation process, a public prosecutor collaborates with an investigation officer to prepare a post-mortem report and/or an investigation report with respect to the allegations of torture, enforced disappearance and extrajudicial killing. Any officer who is found to have been engaged in such act will be prosecuted in accordance with the law. No legal immunity or exception of any kind will be granted.

Porlajee "Billy" Rakchongcharoen

14. On 2 July 2018, the case regarding the disappearance of Mr. Porlajee "Billy" Rakchongcharoen was announced in the Royal Gazette of 11 July 2018 to be a special case under the investigation of the Department of Special Investigations, Ministry of Justice.

15. Under the Special Case Investigation Act B.E. 2547 (2004), the investigative powers are centralized at the Department of Special Investigations, mitigating the risk of investigations being influenced by local officers. Due to the complicated nature of special cases, officers are also provided more access for the purpose of inquiry, investigation and collection of evidence.

Framework for Reparations

16. The key legislations on reparations for victims of human rights violations in Thailand include the Damages for the Injured Persons and Compensation and Expenses for the Accused in Criminal Cases Act B.E. 2544 (2001), and its Amendment Act (No. 2) B.E. 2559 (2016), and the Justice Fund Act B.E. 2558 (2015). The Damages Act aims to compensate victims in criminal cases while the Justice Fund Act broadly stipulates that a person whose rights have been violated is eligible to receive financial compensation. Both legislations complement one another as they purport to provide financial assistance such as medical fees, physical and mental rehabilitation fees, compensation for loss of income and in the case of death. However, the Justice Fund Act's scope is extended beyond injured persons in criminal cases. There are examples of cases where assistance has been provided such as the case of Mr. Somchai Neelapaijit, among others.

17. The National Justice System Reform Plan which was published in the Royal Gazette on 6 April 2018 established the policy framework for the development of a mechanism to assist and further enhance access to justice in Thailand for 2018- 2021. As an example, the Plan highlights the need for timely and adequate protection, improvement of physical and psychological recovery, and better overall access to remedy, for victims and witnesses in criminal cases.

18. By virtue of the Southern Border Provinces Administration Act B.E. 2553 (2010) which provides for financial compensation to individuals whose rights have been infringed upon in the Southern Border Provinces, as of March 2018, 46 persons have received such compensation, totaling approximately 60,000,000 THB (1,792,650 USD). Furthermore, the Southern Border Provinces Administrative Center has also initiated a project to uplift the quality of life of the injured person's family and provide them with humanitarian assistance. Financial assistance (50,000 THB or approximately 1,440 USD) is awarded to each of the families affected by the incidents in the SBPs whereby 26 families have been assisted as of March 2018. Similarly, the Internal Security Operations Command also awards monthly

support fund (4,500 THB or approximately 135 USD) to the families of the deceased or injured persons who suffer from a disability.[1]

Review of Application of Special Laws

19. The application of special laws is periodically reviewed on the basis of necessity in light of changing circumstances. On 20 February 2018, the Cabinet has revoked the application of the Emergency Decree on Public Administration in Emergency Situations B.E. 2548 (2005) in Betong district, Yala Province. As a result, the National Security Act B.E. 2551 (2008) has been in effect in Betong district in its stead. In comparison to the Emergency Decree, the National Security Act imposes fewer restrictions on the freedom of assembly, expression, and movement. It also does not restrict the right to file claims against officers in case of alleged human rights violations.

Training of Law Enforcement Officials and Military Personnel

20. Since 2017, the Ministry of Justice has carried out a project to promote the rights and liberties of the people in SBPs through human rights trainings and collaborations between government officials and the public. The targeted participants include soldiers, police officers, administrative officers, volunteers, and Ministry of Justice's officers. In 2017, 1,920 individuals underwent the trainings and another 1,440 persons are expected to receive similar trainings in 2018. The Internal Security Operations Command also holds periodic trainings every 6 months on internal security law, law on the use of force, as well as on other relevant laws and international standards for law enforcement and military officers who will serve in the Region 4 Forward Command.

21. Moreover, the Ministry of Defence, in collaboration with the National Human Rights Commission, the Royal Thai Police, the Ministry of Justice, and the Internal Security Operations Command, also conduct other similar capacity-building trainings for a wider range of participants throughout the country, including military officers, police officers, and administrative officers, with particular focuses on military and legal enforcement measures pursuant to domestic and international standards, in particular, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

22. In addition, the Ministry of Foreign Affairs periodically organizes capacity-building workshops for government agencies for more effective implementation of international human rights obligations. This includes issue-specific trainings such as the workshop on international human rights standards and obligations related to the exercise of duties of military personnel and law enforcement officials, co-organized with relevant agencies such as the Ministry of Justice and the Ministry of Defence, as well as OHCHR.

III. Conditions of Detention (Paragraph 34 of the Concluding Observations)

Treatment of Detainees and the Implementation of the Nelson Mandela Rules

23. Thailand is committed to strengthening its efforts to improve conditions of detention. On 18 July 2017, to commemorate the Nelson Mandela International Day, the Department of Corrections under the Ministry of Justice, and Thailand Institute of Justice (TIJ) announced their collective commitments to drive forward the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) towards full and effective implementation in the country. The Department of Corrections has commenced the project, with the Thonburi Remand Prison as a pilot penitentiary to fully implement the Nelson Mandela Rules in 2018.

[1] 1 THB = 0.02 USD as of 13 July 2018, according to the exchange rate of the Bank of Thailand.

24. In a broader picture, the Department of Corrections circulated instructions that all prison personnel and relevant staff treat detainees in accordance with international human rights standards as well as to create a better understanding of the obligations under the Convention against Torture under their specific contexts.

25. The Medical Services Division of the Department of Corrections places efforts and resources in ensuring that inmates receive adequate medical services such as through regular visits to external hospitals. The Penitentiary Act B.E. 2560 (2017) also requires that a medical center be established in every prison.

Restraining Devices

26. Thailand notes the Committee's concern on the use of restraining devices and has been making serious effort to restrict the use of such devices. The Department of Corrections now operates pursuant to Section 21 of the 2017 Penitentiary Act which applies a higher standard than that required by the Nelson Mandela Rules. Restraining devices are not allowed to be used with inmates unless is an absolute necessity such as to prevent self-harm or to prevent escape, with an even stricter requirements if involving detainees who are under the age of 18, over the age of 60 years, female detainees, or those with special medical requirements. In the case where restraining devices are used, such decision is reviewed every 15 days.

Overcrowding and Alternatives to Detention

27. Thailand recognizes the problem of overcrowding in places of detention under the supervision of the Department of Corrections. On the other hand, detention centers under the supervision of the Department of Special Investigations, and immigration detention centers under the supervision of the Immigration Bureau and military prisons are operating within their respective capacities and do not face overcrowding.

28. In this regard, the Justice System Reform Plan of 6 April 2018 strives to enhance various aspects of the judicial system, including to improve the conditions of prisons and detention centers across the country.

29. The 2017 Penitentiary Act provides the Department of Corrections with the tools to solve the problem of overcrowding in an effective and practical manner. The Penitentiary Act mandates the Department of Corrections to employ alternatives to detention, including allowing for 'other facilities which are not prisons' to be designated as detention facilities. Similarly, the Office of the Narcotics Control Board is revising its internal regulations to allow addicted offenders to undergo a rehabilitation program in lieu of prison sentence.

30. To implement the 2017 Penitentiary Act, the Ministry of Justice is currently drafting a ministerial regulation to specify six alternative criminal sanctions to imprisonment, including (i) intermittent detention, (ii) detention during specified hours, (iii) detention within the specified place of detention, (iv) community service, (v) travel restrictions in accordance with the Section 89/2 of the Criminal Procedure Code, and (vi) any other sanction specified by the Department of Corrections.

31. Furthermore, the 2017 Penitentiary Act specifies measures for reducing sanctions, suspending sentences and early release which may be applied to inmates who have displayed good behavior. On 25 January 2017, the Department of Corrections also launched a project to allow for suspension of sentences in special cases where the concerned inmate has a serious illness, is a person with disabilities, or if he or she is over the age of 70 years.

32. On 1 March 2018, the Court of Justice and the Department of Probation introduced the Electronic Monitoring (EM) system as an alternative to detention for prisoners who have been granted temporary release instead of posting bail money.

Assistance to Reintegration and Employment

33. To prepare and support detainees on livelihoods after their release, the Department of Corrections has developed a training program to ensure that released persons are able to reintegrate into society and resume their normal lives. The Department also provides consultation services regarding personal matters, economic and social issues, and relationship with their families and communities. One of the most recent developments is the establishment of the Center for Assistance to Reintegration and Employment (CARE) in each of the 143 prisons nationwide. CARE commenced their operations on 15 February 2018 with the main objective of promoting employment for inmates after their release.

34. On 26 March 2018, the Department of Employment under the Ministry of Labour signed memoranda of understanding on public-private partnership projects with the Department of Skill Development, the Department of Corrections, the Federation of Thai Industries and the Chamber of Commerce of Thailand, to create opportunities for inmates by building their skills suitable for a career after release.

Juvenile Offenders

35. As with the case of adult detainees, the Management of Rehabilitation of Child and Juvenile Offenders Act B.E. 2561 (2018) requires the government to prepare child and juvenile offenders for release. In addition, a broader range of social welfare support will be also provided post-release to ensure that former child and juvenile offenders continue to have access to assistance.

LGBTI Detainees

36. In addition to the work of the Committee on the Promotion and Protection of LGBTI Rights in the Justice System, since 1993, the Department of Corrections has established the Practice Guide on Detainees who are Transgender Women which provides for specific measures such as detaining transgender women in separate facilities from male detainees and ensuring that equipment for physical inspections does not undermine transgender women inmates' rights and dignity.

37. Section 31 of the 2017 Penitentiary Act affirms that appropriate facilities be provided for inmates based on gender. In response, the Department of Corrections provided separate zones for LGBTI inmates, particularly in prisons with a significant number of LGBTI inmates such as the Minburi Remand Prison, the Klong Prem Central Prison, and the Pattaya Remand Prison.